IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 3291 OF 2004

Shirin K. Bharucha .. Petitioner

V/s

Union of India & Ors. .. Respondents

Mr.Janak Dwarkadas with Mr.J.B. Lentin and Ms.Shiralkar i/b Maneksha & Sethna for the petitioner.

Mr.D.A. Dubey for respondent No.1.

Mr.Niranjan Pandit, A.G.P. for respondents Nos.2 and 3.

Ms. G. Gautam for respondent No.4.

Mr.Shyam Diwan with Mr. M.S. Doctor i/b Nankani & Co. for respondents Nos.7 and 8.

CORAM : H.L. GOKHALE &
S.C. DHARMADHIKARI, JJ.

DATE : 12TH JANUARY 2005

P.C. :

1. The petitioner herein is the Secretary of an Association known as Kalaghoda Association. This Association has proposed to hold a festival in South Mumbai from 15th to 23rd January 2005. They want to set up a stage on the road connecting Mahatma Gandhi Road with Shaheed Bhagat Singh Road and passing between Jahangir Art Gallery on one side and Rythm House on the other. They had proposed to set up one stage for a certain dance programme at the centre of the road and had applied for permission to the authorities concerned. The Colaba Police Station has issued a letter to an

Executive of this Festival Committee dated 13th December 2004. This letter permits them to put up a loudspeaker. Condition No.1 of this permission is that the size of loudspeaker should be 15 inch x 10 inch box type and its capacity should be 3.5 watts. The petitioners are aggrieved by this communication and particularly this condition. They want to have loudspeakers of larger size at that particular place during the period of this festival. It is for this purpose that the present petition has been filed.

2. Mr.Dwarkadas, learned Senior Counsel appearing for the petitioner, submitted that the area is not designated as silence zone and, therefore, it was not permissible for the authorities to put any such restriction. As against that, we have the amended Noise Pollution (Regulation and Control) Rules, 2001 which have been published in the Official Gazette on 22nd November 2000. "Silence zone" is defined in Note-3 of these Rules and it reads as follows:-

> "3. Silence zone is an area comprising not less than 100 meters around hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority."

Thus, as far as the silence zone is concerned, it is now defined as an area comprising not less than 100 meters around hospitals, educational institutions, courts and religious places. Over and above that, it is added that it could be any other area which is declared as such by the competent authority.

3. Mr.Pandit, the learned A.G.P. for the State and its officers, points out that the petitioner had proposed to set up a stage at the centre of the road and since that particular place was beyond 100 meters from any such religious or educational institution, the necessary permission has been granted by the concerned police station. He however stated that the other option, which was being suggested by the petitioner, namely to put up the stage on the footpath adjoining Maxmuller Bhavan that would be definitely hit by this rule inasmuch as it is within 100 meters from an adjoining church. He further states that it is the responsibility of the authorities to see to it that the noise pollution does not exceed 65 decibels and as per their own rules, they have granted this permission to place the loudspeakers of the size of 15 inch x 10 inch of box type with a capacity of 3.5 watts.

4. Mr.Diwan, learned counsel appearing for respondents Nos.7 and 8, submitted that there have been number of orders passed in various proceedings including the one initiated by the present petitioner earlier and efforts are made to see to it that noise pollution is avoided at any cost. He has in fact opposed any such programme with loudspeakers at the centre of the road. However, this is not a petition filed by respondent No.8 and, therefore, it is not possible for us to go into the submissions of Mr.Diwan in a petition which is filed by the present petitioner.

5. As far as the grievance of Mr.Dwarkadas that he should be permitted to have larger loudspeakers so that sound level does not exceed 65 decibels is concerned, he has not placed before us any data on the basis of which we can draw any inference that a loudspeaker of a particular size would be an appropriate one so that the sound emanating therefrom is in the proximity but less than 65 decibels. In the absence of any such material being produced by the petitioner, we cannot fault the decision of the police authorities nor can we substitute our ideas in place of rules, which, Mr.Pandit points out, are holding the field.

6. The petition is therefore rejected.

(H.L. GOKHALE, J.)

(S.C. DHARMADHIKARI, J.)